

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

GREGORY T. WALKER, M.D.

PLAINTIFF

V.

NO. 2:99CV114-P-A

MISSISSIPPI STATE BOARD
OF MEDICAL LICENSURE, ET AL.

DEFENDANTS

MEMORANDUM OPINION

Presently before the Court are several motions: the Motion to Dismiss and for Summary Judgment by Defendants Durham and Chambers [43-1 and 43-2]; the Motion to Dismiss by Defendant Floyd Peete [45-1]; the Motion to Dismiss, or in the Alternative, for Summary Judgment by Defendants Mississippi State Board of Medical Licensure, Joe Burnette, Charles Moses, Mississippi Division of Medicaid, Office of the Governor of the State of Mississippi, Stanley Ingram¹ [46-1]; the Motion to Dismiss by Defendant Teresa Patterson [50-1]; the Motion to Dismiss by Defendant Mark Webb [57-1]; the Motion to Dismiss by Defendant Desh Sidhu [63-1]; the Motion to Dismiss by Defendant Karen Factory [70-1]; the Motion to Dismiss, or in the Alternative, for Summary Judgment, by Defendant University of Mississippi Analytical Toxicology Lab [72-1]; the Motion for Summary Judgment by Defendant Ed Brunini [81-1]; and the Motion for Summary Judgment by Defendant Mark Webb [92-1]. The Motion to Dismiss, or in the Alternative, for Summary Judgment filed by the State Board of Medical Licensure, et al., has been joined by Defendants Mississippi Recovering Physicians Program and Kay Gatewood [56-1], as well as Forrest General Hospital [64-1]. The Court has considered all of these motions, the responses thereto, and the briefs and authorities cited, and is prepared to rule. The facts of the case are as follows:

FACTUAL BACKGROUND

¹Heidelberg & Woodliff, P.A., and the Mississippi Department of Public Safety Highway Patrol also moved to dismiss with these named defendants; however, the Court issued an order dismissing these parties on May 11, 2000 [85-1].

The Plaintiff, Gregory T. Walker, M.D., filed a thirty page, single-spaced complaint with this Court on June 8, 1999, and an equally lengthy amended complaint on August 13, 1999. According to the complaint, the forty-three named defendants conspired to deprive Walker of his civil rights. Namely, the defendants discriminated against Walker on the basis of his race (African-American) and because of his disability or perceived disability. Additionally, he claims that certain named defendants violated the Racketeer Influenced and Corrupt Organizations (RICO) Act, violated the Fourth Amendment, and violated Miss. Code Ann. §§71-7-9 and 75-25-1.

In December of 1993, Walker, who was licensed to practice medicine in Arizona, was ordered by the Arizona Board of Medical Examiners to enter into a rehabilitation program for substance abuse. In April of 1995, Walker applied for a medical license in the state of Mississippi. The Mississippi State Board of Medical Licensure requested Walker to sign a Consent Order which required him to submit to random, unannounced urine and blood screens, required him to affiliate with the Mississippi State Medical Association's Impaired Professionals Program, and required him to complete a prescribed physician educational program. He violated this Consent Order on numerous occasions. Apparently, the Board gave him a second chance and allowed Walker to enter into another Consent Order, which again urged him to comply with the Board's requests. The Board's primary concern at all times was to ensure that Walker was able to practice medicine with reasonable skill and safety to the patients. Throughout the next year or so, Walker was able to practice medicine in the state, despite the fact that he was unwilling to submit to the requirements of the Consent Order; however, in early 1998, he tested positive for marijuana. His license was then revoked for an indefinite period of time.

Throughout the Board's investigation of him, Walker claims that he was stalked and harassed by various agents of the Board. He also claims that the Board, his wife and his attorneys were involved in an elaborate conspiracy with the Board and its agents to keep Walker from maintaining his medical license.

LEGAL ANALYSIS

A. Conspiracy

1. State Defendants

The Mississippi State Board of Medical Licensure, Joe Burnette, Charles Moses, the Mississippi Division of Medicaid, the Office of the Governor of the State of Mississippi, and Stanley T. Ingram have filed a Motion to Dismiss, or in the Alternative, for Summary Judgment. Defendants Mississippi Recovering Physicians Program and Kay Gatewood have filed a Joinder in this Motion, as has Forrest General Hospital. Also, the University of Mississippi Medical Center Analytical Toxicology Lab has filed a Motion to Dismiss, or in the Alternative, for Summary Judgment.

The Licensure Board, the Mississippi Division of Medicaid, Forrest General Hospital, and the University of Mississippi Analytical Toxicology Lab are entitled to immunity pursuant to Miss. Code Ann. § 73-25-67. The claims against these defendants are barred by the United States Supreme Court's holding in Will v. Michigan Dep. of St. Police, 491 U.S. 58 (1989), and the Eleventh Amendment. Furthermore, since the Mississippi Recovering Physicians Program serves as an arm or agency of the State of Mississippi, it is entitled to immunity pursuant to Miss. Code Ann. § 73-25-67.

The Plaintiff's claims against Burnette, Ingram, Moses, and Gatewood are barred by qualified immunity. Government officials performing discretionary functions are entitled to qualified immunity from an individual capacity suit unless their conduct is objectively unreasonable in light of clearly established constitutional law. Anderson v. Creighton, 483 U.S. 635 (1987). Clearly, Walker has not met his burden of showing that the conduct of these individuals violated a Constitutional right of which a reasonable official should have known. See Harlow v. Fitzgerald, 457 U.S. 800 (1982). Therefore, summary judgment is proper with respect to these defendants. See Celotex Corporation v. Catrett, 477 U.S. 317 (1986).

Additionally, with regard to Walker's claim against Floyd Peete, Jr., Chancellor for the

State of Tennessee in Shelby County, the claim should be barred pursuant to the doctrine of judicial immunity and the Eleventh Amendment. Judges are absolutely immune from suits for damages stemming from actions taken pursuant to their judicial role, and immunity may be overcome only where a plaintiff can show that the judge acted in a non-judicial capacity or that the judge lacked jurisdiction. Stump v. Sparkman, 435 U.S. 349, 356-357 (1978). Walker has made no such showing; therefore, Chancellor Peete is entitled to judicial immunity, and the claims against him should be dismissed.

2. Private Actors

a. Alan Chambers, Handel Durham, Teresa Patterson, and Ed Brunini, Jr.

Walker hired the law firm of Chambers & Durham to represent him. However, he alleges that shortly after he paid Chambers and Durham a down payment, they collaborated and conspired with defendant Karen Factory, Walker's ex-wife, and her attorney, defendant Teresa Patterson. Additionally, Walker hired Ed Brunini, Jr., to represent him before the Mississippi State Board of Medical Licensure. Walker asserts that Brunini, too, was a participant in the conspiracy to deprive Walker of his medical license.

To successfully prove a § 1983 action, a plaintiff must prove that the defendant deprived him of a right secured by the United States Constitution, and that the defendant acted "under color of . . . statute, ordinance, regulation, custom, or usage, of any State or Territory." Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970). Private attorneys are not state actors merely because they are licensed by the state. Hudson v. Hughes, 98 F.3d 868, 873 (5th Cir. 1996). Conspiracy claims under § 1983 require that the plaintiff relate specific facts, not merely conclusory allegations. Hale v. Harney, 786 F.2d 688, 690 (5th Cir. 1986). The operative facts of the conspiracy must be plead with particularity, not merely suggested by vague assertions. Lynch v. Cannatella, 810 F.2d 1363, 1370 (5th Cir. 1987). A plaintiff may have a claim against a private individual for conspiracy to violate his civil rights under § 1983 if the individual is a "willing participant in a joint action with the state or its agents." Brinkman v. Johnson, 793 F.2d

111, 112 (5th Cir. 1986).

Clearly, Walker has not produced any credible evidence to indicate that these attorneys were “willing participants” with state agents in some sort of elaborate conspiracy to deprive Walker of his constitutional rights. As such, the claims against all of these attorneys should be dismissed.

b. Karen Factory

Walker claims that Defendant Karen Factory, his ex-wife, married and divorced him in furtherance of the grand scheme of conspiracy to deprive him of his rights, privileges and immunities under the law. Factory has moved to dismiss pursuant to Rule 12 (b)(5) and Rule 4 (m) of the Federal Rules of Civil Procedure, alleging that she has never been properly served with a copy of the complaint against her. While Walker asserts that Factory was properly served, this Court cannot ignore the fact that, based on his complaint, Walker has failed to state a cause of action against his ex-wife. He alleges that she, too, was involved in the conspiracy to deprive him of his rights. Again, since Factory is a private citizen, Walker cannot demonstrate that she acted under color of state law. Therefore, he will only have a cause of action against her if he can show that she was a “willing participant in a joint action with the state or its agents.” Brinkman, 793 F.2d 111, 112 (5th Cir. 1986). He has made no such showing. As such, the claims against her should be dismissed.

c. Dr. Mark Webb

Walker claims that Dr. Mark Webb conspired with other individuals and governmental agencies to violate Walker’s civil rights. His only contact with Dr. Webb occurred during an hour long medical examination, made at Walker’s insistence. Dr. Webb prepared a written report based on his evaluation of Walker, and no more contact was ever made between the two. Clearly, Walker has stated no cause of action against Dr. Webb. Dr. Webb is a private physician, not a state actor, so he did not act under color of state law to deprive Walker of his civil rights. Additionally, Dr. Webb “provided [Walker] with that degree of care, skill, and diligence which

would have been provided by a reasonably prudent, minimally competent [psychiatrist] when faced with same or similar circumstances.” See McCarty v. Mladineo, 636 S.2d 377, 381 (Miss. 1994). Thus, Dr. Webb did not, contrary to Walker’s belief, commit medical malpractice. Therefore, this Court is of the opinion that no claims exist against Dr. Mark Webb, and his Motion to Dismiss and Motion for Summary Judgment should be granted.

d. Dr. Desh Sidhu

Walker claims that Dr. Sidhu conspired with others to deprive him of his right to practice medicine in Mississippi by withdrawing his “newborn privileges” from the Senatobia, Mississippi, hospital. As stated before, despite Walker’s conclusory allegations of conspiracy, this Court has not seen any evidence to indicate that Dr. Sidhu acted inappropriately. As such, the claims against him should be dismissed.

e. Certi-Comp Court Reporters

Walker has named as a defendant Certi-Comp Court Reporters, as well as its President, Melissa Burnham. He voluntarily dismissed Burnham from this lawsuit, but he did not voluntarily dismiss Certi-Comp. The Court notes that the summons issued for Certi-Comp has not been returned as executed, thus it is not a proper defendant in this matter. In any event, however, the Court can find no cognizable claim against Certi-Corp, and all claims against it should be dismissed.

B. Discrimination under § 1981 and 42 U.S.C. §§ 12101-12213

Walker has submitted no evidence before this Court that any of the defendants discriminated against him in any way because of his race. Walker’s complaint includes “a litany of general conclusions that shock but have no meaning.” See Barr v. Abrams, 810 F.2d 358, 363 (2nd Cir. 1987). Additionally, no evidence has been submitted to indicate that any of the defendants discriminated against Walker because of his disability; in fact, the Court is not even sure what Walker’s disability is. Therefore, his claims that he was discriminated against because of his race and disability should be dismissed.

C. RICO Violations under 18 U.S.C. § 1962(c)

Walker alleges that the defendants, in conspiring against him, committed several violations of the RICO act. However, this Court is of the opinion that no RICO violations have occurred. Walker has not established a pattern of racketeering activity. Instead, his complaint is full of ambiguous and conclusory allegations of wife fraud, mail fraud, extortion, etc. In order for his RICO claim to survive, Walker's complaint "must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise." Elliot v. Foufas, 867 F.2d 877, 881 (5th Cir. 1989). Since Walker has not demonstrated the existence of a RICO enterprise or racketeering activity, his claims regarding RICO violations should be dismissed.

D. Remaining Claims

As to the other claims raised by Walker in his complaint, the Court has considered them and has come to the conclusion that they, too, are without merit. As such, the defendants are entitled to dismissal of these claims.

CONCLUSION

Based on the foregoing, the Court is of the opinion that the defendants' motions to dismiss and for summary judgment should be granted. An order will issue accordingly.

THIS, the 22nd day of September, 2000.

W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE